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H.557

Introduced by Representative Sweaney of Windsor

Referred to Committee on

Date:

Subject: Executive; General Assembly; governmental ethics; Ethics

Commission

Statement of purpose of bill as introduced: This bill proposes to establish an Ethics Commission and its support staff to receive and investigate complaints alleging unethical conduct committed by legislators outside the scope of their core legislative duties and by elected and appointed officers in the Executive Branch. The bill would establish a Code of Ethics for those public officials, by which the Ethics Commission would judge ethics complaints. The Code of Ethics would include, as applicable, disclosures and prohibited conduct, including prohibitions for limited periods of time on accepting certain employment. If the Ethics Commission determines that a legislator or Executive officer violated the Code of Ethics, it could order certain penalties, with those orders appealable to the Vermont Supreme Court.

An act relating to establishing a State Ethics Commission

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 Sec. 1. FINDINGS AND PURPOSE

3 (a) Findings.

4 (1) The General Assembly finds that the citizens of the State of Vermont
5 desire a system by which the conduct of officers of State government may be
6 analyzed to ensure that those officers are acting as the citizens' trustees and
7 servants.

8 (2) The Vermont Constitution provides the framework within which our
9 State government must operate. Within that framework, each of the three
10 branches of State government are required to have separate and distinct powers
11 so that none of the branches exercise the powers belonging to the others.
12 Vt. Const. Ch. II, § 5. In accordance with that separation of powers principle,
13 to a certain extent, each branch regulates its own ethics.

14 (A) In the Legislative Branch, each chamber of the General
15 Assembly has the exclusive constitutional authority to judge the qualifications
16 of and expel its members. Vt. Const. Ch. II, §§ 14 and 19. The Vermont
17 Supreme Court has interpreted "judging qualifications" to encompass the
18 authority to determine whether a member's personal or pecuniary interest
19 requires disqualification from voting on a question before the chamber. *Brady*
20 *v. Dean*, 173 Vt. 542, 544 (2001). However, our Court has cautioned that not
21 all potential conflicts of interest of legislators are "immune from every form of

1 executive or judicial oversight” and that legislators “may be criminally
2 prosecuted for certain actions, such as soliciting or accepting bribes [citing
3 13 V.S.A. § 1102], or even subject to civil suit for actions outside the scope of
4 their legislative duties.” *Id.* at 545.

5 (B) In the Judicial Branch, the Vermont Supreme Court has
6 disciplinary authority concerning all judicial officers in the State, Vt. Const.
7 Ch. II, § 30, including the power to suspend those officers. Vt. Const. Ch. II,
8 § 36. The Court has established the Judicial Conduct Board to receive,
9 investigate, and adjudicate complaints alleging unethical judicial conduct,
10 subject to review by the Court. *See Rules of the Supreme Court for*
11 Disciplinary Control of Judges. “The ultimate decision in all judicial
12 disciplinary matters rests with this Court . . .” *In re Hodgdon*, 189 Vt. 265,
13 272 (2011). The General Assembly holds the powers of judicial retention set
14 forth in Vt. Const. Ch. II, § 34 and of impeachment of State judicial officers set
15 forth in Vt. Const. Ch. II, §§ 57 and 58.

16 (C) In the Executive Branch, each constitutional officer within that
17 branch enjoys a term of office set forth in the Vermont Constitution. Under
18 Vt. Const. Ch. II, § 20, the “Governor . . . shall have power to commission all
19 officers, and also to appoint officers, except where provision is, or shall be,
20 otherwise made by law or this Frame of Government; and . . . is also to take
21 care that the laws be faithfully executed . . .” The General Assembly holds the

1 power of impeachment of State executive officers set forth in Vt. Const. Ch. II,
2 §§ 57 and 58.

3 (b) Purpose. The purpose of this act is to provide a system for regulating
4 governmental ethics in accordance with the framework of the Vermont
5 Constitution, in order to give effect to the constitutional principle set forth in
6 Vt. Const. Ch. I, Art. 6 that officers of government are servants of the people
7 and at all times, in a legal way, accountable to them.

8 Sec. 2. 3 V.S.A. Part 1, chapter 31 is added to read:

9 CHAPTER 31. GOVERNMENTAL ETHICS

10 Subchapter 1. General Provisions

11 § 1201. PURPOSE

12 The purpose of this chapter is to establish the Code of Ethics set forth in
13 subchapters 2 through 4 of this chapter for Executive officers and for
14 legislators outside the scope of core legislative duties, and to establish the State
15 Ethics Commission to enforce that Code of Ethics.

16 § 1202. DEFINITIONS

17 As used in this chapter:

18 (1) “Appearance of a conflict of interest” means the impression that a
19 reasonable person might have, after full disclosure of the facts, that an
20 individual has a conflict of interest, even though the individual does not have
21 an actual conflict of interest.

1 (2) “Business associate” means:

2 (A) any business:

3 (i) in which an individual subject to this chapter is a director,
4 officer, partner, trustee, or employee or holds any position of management; or

5 (ii) in which an individual subject to this chapter has an
6 investment worth \$2,000.00 or more; or

7 (B) a person that has an investment worth \$2,000.00 or more in a
8 business in which an individual subject to this chapter also has such an
9 investment.

10 (3) “Candidate” and “candidate’s committee” shall have the same
11 meanings as in 17 V.S.A. § 2901.

12 (4)(A) “Conflict of interest” means an interest of an individual that is in
13 conflict with the proper discharge of his or her official duties due to a
14 significant personal or financial interest of the individual, a member of the
15 individual’s immediate family, or the individual’s business associate.

16 (B) “Conflict of interest” does not include any interest that is not
17 greater than that of any other persons generally affected by the outcome of a
18 matter.

19 (5) “Contribution” shall have the same meaning as in 17 V.S.A. § 2901.

20 (6) “Executive officer” means:

1 (A) the Governor, Lieutenant Governor, Treasurer, Secretary of
2 State, Auditor of Accounts, or Attorney General; or

3 (B) a person appointed by or upon the approval of the Governor or by
4 or upon the approval of such an appointee, who works as an exempt employee
5 for an agency, department, or office of the State but not for any board,
6 commission, council, or similar entity of the State, and who receives a full-
7 time salary for State service.

8 (7) “Immediate family” means a parent, stepparent, sibling, grandparent,
9 spouse, domestic partner, or child.

10 (8) “Legislator” means a member of the General Assembly.

11 (9) “Lobbying” and “lobbyist” shall have the same meanings as in
12 2 V.S.A. § 261.

13 (10) “Political committee” and “political party” shall have the same
14 meanings as in 17 V.S.A. § 2901.

15 (11) “Private entity” means any person, including any corporation,
16 partnership, joint venture, or association, whether organized for profit or not
17 for profit, except those specifically chartered by the State or that rely upon
18 taxes for at least 50 percent of its revenues.

19 (12) “Public body” means any agency, department, division, or office,
20 or any board, commission, council, or similar entity, in the Executive Branch
21 of the State.

1 (13) “Regulated by an office, agency, or department” means that the
2 office, agency, or department is responsible for controlling, restricting, or
3 otherwise overseeing an entity in order for that entity to legally operate in this
4 State.

5 Subchapter 2. Code of Ethics—Disclosures

6 § 1211. EXECUTIVE OFFICERS; ANNUAL DISCLOSURE

7 (a) Annually, each Executive officer shall file with the State Ethics
8 Commission a disclosure form that contains the following information in
9 regard to the previous calendar year for the officer and any spouse or domestic
10 partner and any dependent child of the officer:

11 (1) each source of income totaling \$2,000.00 or more and a description
12 of the source, including any job title, employer or business name, and address,
13 but not specifying the amount of the income;

14 (2) each parcel of real property owned by the person or held in the name
15 of a corporation, partnership, or trust for the benefit of him or her, and its
16 location;

17 (3) any boards, commissions, or other entities on which the person
18 serves, a description of that position, and whether the person receives any form
19 of remuneration for that position, but not specifying the amount of
20 remuneration; and

1 (4) any leases or contracts with the State held or entered into by the
2 person or his or her business associate.

3 (b) An officer shall file his or her disclosure on or before February 15 or if
4 he or she is appointed after February 15, within 10 days after that appointment.

5 § 1212. EXECUTIVE OFFICERS; UPDATED ANNUAL DISCLOSURE;
6 SUBSTANTIAL CHANGES

7 (a)(1) An Executive officer shall file an updated annual disclosure
8 concerning the current calendar year if there is a substantial change in the
9 information required to be reported in the annual disclosure set forth in
10 subsection 1211(a) of this subchapter.

11 (2) As used in this section, “substantial change” means that since the
12 filing of that annual disclosure, for any person about whom the officer is
13 required to report in that disclosure, the person has obtained:

14 (A) a value of at least \$5,000.00 during the calendar year for any new
15 source of income, new parcel of real property, or remuneration for a new entity
16 on which the person serves; or

17 (B) a new lease or contract with the State, of any value, held or
18 entered into by the person or his or her business associate.

19 (b) An officer shall file his or her updated annual disclosure within 10 days
20 of the substantial change.

1 § 1213. EXECUTIVE OFFICERS; CONFLICT OF INTEREST OR THE
2 APPEARANCE OF A CONFLICT OF INTEREST

3 Within 10 days of a conflict of interest or the appearance of a conflict of
4 interest, an Executive officer shall file with the State Ethics Commission a
5 description of that conflict or the appearance thereof and a description of any
6 steps the officer will take to avoid the conflict or the appearance thereof.

7 § 1214. FILING DISCLOSURES

8 (a) The State Ethics Commission shall provide on its website an online
9 database of the disclosures required to be filed with the Commission.

10 (1) In this database, the Commission shall provide digital access to each
11 form that it shall provide to enable a person to file the required disclosures.
12 Digital access shall enable a person to file these disclosures by completing and
13 submitting the disclosure to the Commission online.

14 (2) The Commission shall maintain on the online database all
15 disclosures that have been filed digitally on it so that any person may have
16 direct machine-readable electronic access to the individual data elements in
17 each disclosure and the ability to search those data elements as soon as a
18 disclosure is filed.

19 (b) Any person required to file a disclosure with the Commission shall
20 sign it, declare that it is made under the penalties of perjury, and file it digitally
21 on the online database.

1 Subchapter 3. Code of Ethics—Prohibited Conduct While in Office

2 § 1221. EXECUTIVE OFFICERS; FINANCIAL INTEREST IN

3 GOVERNMENTAL DECISION

4 (a) Except as provided in subsection (c) of this section, an Executive
5 officer shall not make, participate in the making of, or use his or her official
6 position to influence any governmental decision in which the officer knows or
7 has reason to know he or she has a financial interest.

8 (b) An Executive officer knows or has reason to know that he or she has a
9 financial interest in a governmental decision if the decision will have a
10 significant financial effect on:

11 (1) the officer, a member of his or her immediate family, or his or her
12 business associate, and that significant financial effect is greater than that of
13 any other persons generally affected by the decision; or

14 (2) any entity, other than the State, with which the officer is actively
15 seeking employment.

16 (c) The prohibition set forth in subsection (a) of this section shall not apply
17 to any constitutional authority held by the Executive officer.

18 § 1222. EXECUTIVE OFFICERS; OWNERSHIP OR FINANCIAL

19 INTEREST IN REGULATED BUSINESSES

20 (a) An Executive officer shall not be the owner of, or financially interested,
21 directly or indirectly, in any corporation or association regulated by his or her

1 office, agency, or department, except as a policy holder in an insurance
2 company or a depositor in a bank.

3 (b) As used in subsection (a) of this section, a direct or indirect financial
4 interest does not include:

5 (1) any insignificant interest held by the officer or a member of his or
6 her immediate family or a business associate; or

7 (2) any interest that is not greater than that of any other persons
8 generally affected by the supervision of the office, agency, or department.

9 § 1223. EXECUTIVE OFFICERS; GIFTS OR FAVORS FROM CERTAIN

10 PERSONS

11 An Executive officer shall not solicit or accept any gift or favor with a value
12 over \$50.00 from any person, or from an individual acting on behalf of that
13 person or from that person's or individual's spouse or domestic partner, if the
14 person:

15 (1) has or seeks to obtain contractual or other business or financial
16 relationships with the officer's office or the agency or department in which he
17 or she is employed; or

18 (2) conducts business or activities that are regulated by the officer's
19 office or the agency or department in which he or she is employed.

1 § 1224. EXECUTIVE OFFICERS; CONTRACTS WITH CONTRIBUTORS

2 (a) An Executive officer shall not solicit or accept a contribution of any
3 value from any person, or from an individual acting on behalf of that person or
4 from that person's or individual's spouse or domestic partner, if the person has
5 or seeks to obtain contractual or other business or financial relationships with
6 the officer's office or the agency or department in which he or she is
7 employed.

8 (b) An Executive officer in his or her official capacity, or his or her office
9 or the agency or department in which he or she is employed, shall not enter
10 into a contract with a person if that person has made a contribution to that
11 officer, or if an individual acting on behalf of that person or that person's or
12 individual's spouse or domestic partner has made a contribution to that officer,
13 within five years preceding the date of the contract.

14 § 1225. LEGISLATORS AND EXECUTIVE OFFICERS; USE OR
15 DISCLOSURE OF CONFIDENTIAL INFORMATION.

16 A legislator or Executive officer shall not use or disclose confidential or
17 privileged information acquired in the performance of his or her official duties
18 for the personal benefit or financial gain of that legislator or Executive officer,
19 or a member of his or her immediate family or a business associate.

1 § 1226. LEGISLATORS AND EXECUTIVE OFFICERS; BRIBERY

2 A legislator or Executive officer shall not commit bribery as described in
3 13 V.S.A. § 1102.

4 Subchapter 4. Code of Ethics—Prohibited Employment Related to Office

5 § 1241. EXECUTIVE OFFICERS

6 For one year after leaving office, a former Executive officer shall not:

7 (1) be a lobbyist, or if not lobbying be otherwise compensated to
8 advocate, on behalf of a private entity before any public body or before the
9 General Assembly or its committees, regarding any particular matter in which
10 the officer had exercised official responsibility; or

11 (2) be employed by any private entity that was regulated by his or her
12 office or the agency or department in which he or she was employed.

13 § 1242. LEGISLATORS

14 (a) For one year after leaving office, a former legislator shall not be a
15 lobbyist.

16 (b)(1) Except as provided in subdivision (2) of this subsection, a legislator
17 or former legislator shall not be employed in a position created by an act of
18 legislation for one year following the date on which the legislation was
19 enacted.

20 (2) The prohibition set forth in subdivision (1) of this subsection shall
21 not apply to any elected position, nor to any appointment on a board,

1 commission, council, or similar entity of the State for which compensation is
2 provided in the form of a per diem.

3 Subchapter 5. Administration

4 § 1251. VERMONT ETHICS COMMISSION

5 (a) Creation. There is created within the Executive Branch an independent
6 commission named the Vermont Ethics Commission to receive, investigate,
7 and adjudicate complaints of alleged violations of the Code of Ethics set forth
8 in subchapters 2 through 4 of this chapter.

9 (b) Membership.

10 (1) The Commission shall be composed of the following five members:

11 (A) a chair of the Commission, who shall be appointed by the Chief
12 Justice of the Supreme Court;

13 (B) a vice chair of the Commission, who shall be appointed by the
14 Governor;

15 (C) one member appointed by the Secretary of State;

16 (D) one member appointed by the Speaker of the House of
17 Representatives; and

18 (E) one member appointed by the Senate Committee on Committees.

19 (2) A member shall not:

20 (A) hold any office in the Legislative, Executive, or Judicial Branch
21 of State government or otherwise be employed by the State;

1 (B) be a lobbyist;

2 (C) be a candidate; or

3 (D) hold any office in a candidate's committee, political committee,
4 or political party.

5 (3) A member may be removed for cause by the remaining members
6 of the Commission in accordance with the Vermont Administrative
7 Procedure Act.

8 (4)(A) A member shall serve a term of three years and until a successor
9 is appointed. A term shall begin on January 1 of the year of appointment and
10 run through December 31 of the last year of the term. Terms of members shall
11 be staggered so that not all terms expire at the same time.

12 (B) A vacancy created before the expiration of a term shall be filled
13 in the same manner as the original appointment for the unexpired portion of the
14 term.

15 (C) A member shall not serve more than two terms. A member
16 appointed to fill a vacancy created before the expiration of a term shall not be
17 deemed to have served a term for the purpose of this subdivision (C).

18 (c) Meetings. Meetings of the Commission may be called by the Chair and
19 shall be called upon the request of any other two Commission members.

1 (d) Reimbursement. Each member of the Commission shall be entitled to
2 per diem compensation and reimbursement of expenses pursuant to
3 32 V.S.A. § 1010.

4 § 1252. COMMISSION MEMBER DUTIES AND PROHIBITED

5 CONDUCT

6 (a) Disclosures. Each member of the Commission shall file the disclosures
7 described in subchapter 2 of this chapter in the manner described in that
8 subchapter.

9 (b) Conflicts of interest.

10 (1) Prohibition; recusal.

11 (A) A Commission member shall not participate in any Commission
12 matter in which he or she has a conflict of interest and shall recuse himself or
13 herself from participation in that matter.

14 (B) The failure of a Commission member to recuse himself or herself
15 as described in subdivision (A) of this subdivision (1) may be grounds for the
16 Commission to discipline or remove that member.

17 (2) Disclosure of conflict of interest.

18 (A) A Commission member who has reason to believe he or she has a
19 conflict of interest or the appearance of a conflict of interest in a Commission
20 matter shall disclose that he or she has that belief and disclose the nature of the
21 conflict of interest or the appearance thereof. This disclosure shall occur at a

1 public Commission meeting or hearing. Alternatively, a Commission member
2 may request that another Commission member recuse himself or herself from a
3 Commission matter due to a conflict of interest.

4 (B) Once there has been a disclosure of a member's conflict of
5 interest or the appearance thereof, members of the Commission shall be
6 afforded the opportunity to ask questions or make comments about the
7 situation and, if appropriate, enter into executive session to address the conflict
8 or the appearance thereof.

9 (3) Postrecusal procedure. A Commission member who has recused
10 himself or herself from participating on a Commission matter shall not sit or
11 deliberate with the Commission on that matter or otherwise act as a
12 Commission member on that matter, but may participate in that matter as a
13 member of the public.

14 (c) Gifts. A Commission member shall not accept a gift given by virtue of
15 the member's membership on the Commission if the gift is not available to the
16 public in general.

17 § 1253. COMMISSION TRAINING FOR PUBLIC OFFICIALS

18 At least annually, the Commission shall make available to Executive
19 officers and legislators training on the Code of Ethics set forth in this chapter.

1 § 1254. COMMISSION ADVISORY OPINIONS TO EXECUTIVE

2 OFFICERS

3 (a) The Commission may issue an advisory opinion regarding any
4 provision of this chapter to an Executive officer upon his or her request.

5 (b) Any advisory opinion issued by the Commission shall be a public
6 record and may be relied upon by the Executive officer in the performance of
7 his or her official duties.

8 § 1255. GENERAL COMMISSION POWERS; COMMISSION STAFF

9 (a) The Commission may:

10 (1) Adopt procedural rules governing the investigatory and adjudicatory
11 process.

12 (2) Issue subpoenas and administer oaths in connection with any
13 authorized hearing, investigation, or disciplinary proceeding.

14 (A) Subpoenas may be issued ex parte by the Chair of the
15 Commission, the Executive Director of the Commission, or any attorney
16 representing a party before the Commission.

17 (B) Depositions may be taken after charges upon due notice to all
18 parties, without specific authorization by the Commission.

19 (b) The Commission shall have the assistance of the following Commission
20 staff employees:

1 (1) An Executive Director, who shall be an exempt State employee and
2 an attorney admitted to practice in this State, act as prosecutor in hearings
3 before the Commission, and generally assist the Commission in the
4 administration of this chapter.

5 (2) At least one investigator, who shall be a classified State employee,
6 be certified as a Level III law enforcement officer under 20 V.S.A. chapter
7 151, have the same powers as a sheriff in criminal matters and the enforcement
8 of the law and in serving criminal process, and have all the immunities and
9 matters of defense now available or hereafter made available to sheriffs in a
10 suit brought against them in consequence for acts done in the course of their
11 employment.

12 (3) Any other employees as permitted by law.

13 § 1256. PROCEDURE FOR RECEIVING, INVESTIGATING, AND

14 ADJUDICATING COMPLAINTS

15 (a) Procedure; generally. Except as otherwise provided in this chapter, the
16 Commission's procedure for receiving, investigating, and adjudicating
17 complaints shall be in accordance with the Vermont Administrative
18 Procedure Act.

19 (b) Complaints; generally.

20 (1) The Commission shall receive complaints from any source and may
21 upon its own motion investigate conduct without receiving a complaint.

1 (2) A person who in good faith files a complaint with the Commission
2 shall not be liable for damages in a civil action.

3 (3)(A) Any complaint regarding the Judicial Branch shall be forwarded
4 to the Judicial Conduct Board.

5 (B) Any complaint regarding a legislator concerning conduct not
6 addressed in this chapter shall be forwarded to the Speaker of the House in the
7 case of a House member or to the President Pro Tempore of the Senate in the
8 case of a Senator.

9 (c) Investigating complaints.

10 (1)(A) The Executive Director of the Commission shall assign one or
11 more members of the Commission to investigate a complaint. Such member or
12 members shall not have a conflict of interest or the appearance of a conflict of
13 interest in the complaint.

14 (B) Such a member shall have the assistance of an investigator for the
15 Commission and the Executive Director.

16 (C) While acting in this capacity, a Commission member shall not sit
17 in adjudication of the case and shall not participate in ex parte communications
18 with other Commission members regarding the case.

19 (D) A Commission member whose term of office expires while an
20 investigation is pending may continue through the completion of the case.

1 (2)(A) When the Executive Director is unable to assign one or more
2 members to investigate a complaint by reason of recusal, resignation, vacancy,
3 or necessary absence, the Executive Director shall, at the request of the
4 Commission, appoint one or more ad hoc members to serve on the
5 Commission for the investigation of that matter only.

6 (B) An ad hoc member shall have the same qualifications as required
7 for Commission members.

8 (d) Notice.

9 (1)(A) The Commission shall notify a complainant in writing of the
10 result of any disciplinary investigation made as a result of his or her complaint
11 filed with the Commission.

12 (B) When an investigation results in a stipulation filed with the
13 Commission, the Commission shall provide the complainant with a copy of the
14 stipulation and notice of the stipulation review scheduled before the
15 Commission. The complainant shall have the right to be heard at the
16 stipulation review.

17 (2) The Commission shall notify parties, in writing, of their right to
18 appeal a final decision of the Commission.

19 (e) Hearing officer.

20 (1) The Commission shall appoint a hearing officer, who shall be an
21 attorney admitted to practice in this State, to preside at hearings for the purpose

1 of making procedural and evidentiary rulings. The Commission may overrule
2 a ruling by the hearing officer. The hearing officer may administer oaths and
3 exercise the powers of the Commission properly incidental to the conduct of
4 the hearing.

5 (2) The hearing officer shall draft findings of fact, conclusions of law,
6 and Commission orders for the Commission's review. The Commission shall
7 enter its findings, conclusions, and orders within 30 days of the conclusion of a
8 hearing, unless the Commission grants an extension.

9 (3) A hearing officer shall not preside at any hearing in which he or she
10 has a conflict of interest or the appearance of a conflict of interest. If a hearing
11 officer refuses to recuse himself or herself from such a hearing, the
12 Commission may remove that hearing officer from presiding at the hearing and
13 appoint a different hearing officer.

14 (f) Procedural authority. The Commission may authorize:

15 (1) its Chair or hearing officer to grant continuances of scheduled
16 hearings;

17 (2) its Chair to grant or deny stays pending appeal; and

18 (3) its Chair or hearing officer to convene and conduct prehearing
19 conferences.

1 (g) Ad hoc Commission members.

2 (1) When the Commission is unable to convene a quorum by reason of
3 recusal, resignation, vacancy, or necessary absence, the remaining members of
4 the Commission shall appoint ad hoc members to serve on the Commission for
5 that matter only.

6 (2) An ad hoc member shall have the same qualifications as required for
7 Commission members.

8 (h) Burden of proof. The burden of proof in a Code of Ethics action shall
9 be on the State to show by clear and convincing evidence that a person has
10 violated the code of ethics.

11 (i) Permitted Commission orders.

12 (1) Upon finding that a person violated a provision of the Code of
13 Ethics, the Commission may order any of the following, alone or in
14 combination:

15 (A) Reprimand.

16 (B) Cease and desist the violation.

17 (C) File or amend a required disclosure.

18 (D) Payment of an administrative penalty for each violation.

19 (i) Except as provided in subdivisions (ii) and (iii) of this
20 subdivision (D), an administrative penalty shall not exceed \$1,000.00 for each
21 violation.

1 (ii) In the case of a continuing violation, each day that a violation
2 continues shall be deemed a separate offense. In no event shall the aggregate
3 penalty for a continuing violation exceed \$10,000.00.

4 (iii) Notwithstanding the limitations on administrative penalties
5 set forth in subdivisions (i) and (ii) of this subdivision (D), an administrative
6 penalty may also include the pecuniary value of any unjust enrichment the
7 person gained as a result of his or her violation.

8 (E) In the case of an Executive officer, recommend:

9 (i) disciplinary action to the officer's supervisor, if applicable; or

10 (ii) impeachment to the General Assembly.

11 (F) In the case of a legislator, recommend disciplinary action to the
12 chamber of the General Assembly of which the legislator is a member.

13 (2) Any money received under this subsection shall be deposited in the
14 State Ethics Fund established in section 1258 of this chapter.

15 (j) Appeals. A party aggrieved by a decision of the Commission may
16 appeal to the Vermont Supreme Court, which shall review the matter on the
17 basis of the records created before the Commission.

18 (k) Application. The provisions of this section shall not act as a bar to
19 criminal or civil proceedings involving the same conduct.

20 (1) The Commission may refer a case to the Attorney General or a
21 State's Attorney for criminal prosecution.

1 (2) In the event that conduct may constitute both a criminal act and a
2 violation of the Code of Ethics, the Commission may on its own motion or
3 upon the request of the Attorney General or a State's Attorney suspend its
4 investigation or a pending hearing for the time period reasonably necessary to
5 avoid compromising a criminal prosecution.

6 § 1257. ACCESSIBILITY AND CONFIDENTIALITY

7 (a) It is the purpose of this section both to protect the reputation of public
8 officials from public disclosure of unwarranted complaints against them and to
9 fulfill the public's right to know of any action taken against a public official
10 when that action is based on a determination of a violation of the Code of
11 Ethics.

12 (b) All meetings and hearings of the Commission shall be subject to the
13 Open Meeting Law.

14 (c) The Executive Director of the Commission shall prepare and maintain a
15 register of all complaints, which shall be a public record and which shall show:

16 (1) with respect to any complaint, the following information:

17 (A) the date and the nature of the complaint, but not including the
18 identity of the public official; and

19 (B) a summary of the completed investigation; and

20 (2) only with respect to a complaint resulting in filing of charges or
21 stipulations, the following additional information:

1 (A) the name and address of the public official and of the
2 complainant;

3 (B) formal charges, provided that they have been served or a
4 reasonable effort to serve them has been made;

5 (C) the findings, conclusions, and order of the Commission;

6 (D) the transcript of the hearing, if one has been made, and exhibits
7 admitted at the hearing;

8 (E) any stipulation filed with the Commission; and

9 (F) any final disposition of the matter by the Vermont Supreme
10 Court.

11 (d) The Commission, its hearing officer, and Commission staff shall keep
12 confidential any other information regarding Code of Ethics complaints,
13 investigations, proceedings, and related records except the information
14 required or permitted to be released under this section.

15 (e) A person charged with violation of the Code of Ethics shall have the
16 right to inspect and copy the investigation file that results in the charges
17 against him or her, except for any attorney work product or other privileged
18 information.

19 (f) Nothing in this section shall prohibit the disclosure of any information
20 regarding Code of Ethics complaints pursuant to an order from a court of
21 competent jurisdiction, or to a State or federal law enforcement agency in the

1 course of its investigation, provided the agency agrees to maintain the
2 confidentiality of the information as provided in subsection (d) of this section.

3 § 1258. STATE ETHICS FUND

4 A State Ethics Fund is created in accordance with 32 V.S.A. chapter 7,
5 subchapter 5 (special funds). All revenues received by the Commission shall
6 be deposited into the Fund and shall not be used for any purpose other than the
7 administration of this chapter, which shall include providing education and
8 training for Commission members, hearing officers, and Commission staff.

9 § 1259. AGENT FOR PROCESS; NONRESIDENTS

10 (a) Whenever a person subject to the provisions of this chapter resides
11 outside the borders of the State and fails to appoint an agent for process, the
12 Executive Director of the Commission shall be an agent of that person, upon
13 whom any process, notice, or demand may be served.

14 (b) In the event any process, notice, or demand is served on the Executive
15 Director in accordance with subsection (a) of this section, the Executive
16 Director shall immediately cause a copy of it to be forwarded by certified mail,
17 addressed to the person at his or her registered office.

18 Sec. 3. APPLICABILITY

19 The provisions of Sec. 2 of this act shall not apply to any contract or
20 employment in effect on the effective date of this act that would otherwise be
21 restricted by this act.

1 Sec. 4. IMPLEMENTATION OF THE STATE ETHICS COMMISSION

2 (a) The State Ethics Commission, created in Sec. 2 of this act, is
3 established on January 1, 2017.

4 (b) Members of the Commission shall be appointed on or before
5 October 15, 2016 in order to prepare as they deem necessary for the
6 establishment of the Commission, including the hiring of Commission staff.
7 Terms of members shall officially begin on January 1, 2017.

8 (c) In order to stagger the terms of the members of the Commission as
9 described in Sec. 2, 3 V.S.A. § 1251(b)(4)(A) of this act, the initial terms of
10 those members shall be as follows:

11 (1) the Chief Justice of the Supreme Court shall appoint the Chair for a
12 three-year term;

13 (2) the Governor shall appoint the Vice Chair for a two-year term;

14 (3) the Secretary of State shall appoint a member for a one-year term;

15 (4) the Speaker of the House of Representatives shall appoint a member
16 for a two-year term; and

17 (5) the Senate Committee on Committees shall appoint a member for a
18 two-year term.

1 Sec. 5. CREATION OF STAFF POSITIONS FOR STATE ETHICS

2 COMMISSION

3 (a) The following positions are created in the State Ethics Commission,
4 created in Sec. 2 of this act, by using existing positions in the position pool:

5 (1) one full-time exempt Executive Director;

6 (2) one full-time classified investigator; and

7 (3) one full-time classified administrative assistant.

8 (b) There is appropriated to the Commission the amount of \$370,260.00 for
9 personal and operating expenses.

10 Sec. 6. GENERAL ASSEMBLY RECOMMENDATION; ISSUES

11 RELATING TO ETHICS AND CONFLICTS OF INTEREST IN

12 MUNICIPALITIES

13 The General Assembly recommends that municipalities use existing
14 statutory authority to address municipal issues relating to ethics and conflicts
15 of interest. Provisions of law addressing those issues include the following:

16 (1) 24 V.S.A. § 1202, regarding the ability of a local board to use the
17 Municipal Administrative Procedure Act set forth in 24 V.S.A. chapter 36,
18 which includes compliance with 12 V.S.A. § 61(a), regarding disqualifications
19 for interest for persons acting in a judicial capacity;

1 (2) 24 V.S.A. § 1984, regarding the ability of the voters of a town, city,
2 or incorporated village to adopt a conflict of interest policy for their elected
3 and appointed officials;

4 (3) 24 V.S.A. § 2291(20), regarding the ability of a town, city, or
5 incorporated village to establish a conflict of interest policy to apply to all
6 elected or appointed officials in the municipality; and

7 (4) 24 V.S.A. § 4461(a), regarding the requirement that an appropriate
8 municipal panel adopt rules of ethics with respect to conflicts of interest as part
9 of its development review procedure.

10 Sec. 7. EFFECTIVE DATE

11 This act shall take effect on July 1, 2016.